

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlmais Johnson	Team: Team # 5	CCRB Case #: 200502214	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/22/2005 4:40 PM	Location of Incident: East 125th Street & Lexington Avenue; Parking lot of 25th Precinct Stationhouse	Precinct: 25	18 Mo. SOL 8/22/2006	EO SOL 8/22/2006	
Date/Time CV Reported Fri, 02/25/2005 12:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/01/2005 4:14 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Michael Licitra	00000	906642	025 PCT
2. LT Christopher Schmidt	00000	907284	025 Pct

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM William Flaherty	00970	926832	025 PCT
2. POM Gregory Greiner	16100	920352	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Michael Licitra	Force: At East 125th Street and Lexington Avenue Lieutenant Michael Licitra used physical force against § 87(2)(b)	
B.LT Michael Licitra	Abuse: In the parking lot of the 25th Precinct Stationhouse Lieutenant Michael Licitra damaged § 87(2)(b)s property.	

Synopsis

On February 22, 2005 at approximately 4:40 p.m. at East 125th Street and Lexington Avenue in Manhattan, Lieutenant Michael Licitra and Officer Gregory Greiner, of the 25th Precinct, arrested § 87(2)(b) and § 87(2)(b) and § 87(2)(b). § 87(2)(b) alleged that Lieutenant Licitra grabbed his neck and threw him to the ground. § 87(2)(b) also alleged that when he was in the 25th Precinct parking lot Lieutenant Licitra dropped his cell phone to the ground, causing it to shatter. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

February 24, 2005

§ 87(2)(b) called Internal Affairs to file a complaint against a police officer (encl. 3A-3B). He stated that he and his friend, § 87(2)(b) were arrested on February 22, 2005 at approximately 12:30 p.m. § 87(2)(b) stated that while § 87(2)(b) was being arrested, he asked an officer, identified as Officer Gregory Griener, for his cell phone, which was in § 87(2)(b)'s possession. § 87(2)(b) alleged that an officer subsequently identified as Lieutenant Michael Licitra threw him against a bus and arrested him. § 87(2)(b) Upon arrival at the 25th Precinct Stationhouse, Lieutenant Licitra asked § 87(2)(b) if the cell phone was his and then threw it on the ground. Sergeant Ferrisco contacted § 87(2)(b) who reiterated § 87(2)(b)'s statement and added that the officer that threw § 87(2)(b)'s cell phone was the partner of Officer Greiner, whom he referred to as his "arresting officer." He further alleged that an officer said, "Get the fuck out of here."

March 7, 2005

§ 87(2)(b) provided a brief telephone statement to the CCRB (encl. 6). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) stated that on the date of incident, his friend § 87(2)(b) was arrested. § 87(2)(b) At the time of arrest, § 87(2)(b) was in possession of § 87(2)(b)'s cell phone so § 87(2)(b) asked § 87(2)(b) to return his phone. § 87(2)(b) refused. § 87(2)(b) then asked the officers, Officer Greiner and Lieutenant Licitra, if they could return the cell phone but one of the officers replied, "No, we're going to keep it." Lieutenant Licitra then pushed § 87(2)(b) against a bus, threw him to the ground and arrested him. When § 87(2)(b) was in the stationhouse parking lot, Lieutenant Licitra approached him with a cell phone and asked him if it was his. When § 87(2)(b) said that it was, the officer smashed the cell phone against the ground. § 87(2)(b) stated that he and § 87(2)(b) were the only civilian witnesses to this incident.

March 16, 2005

§ 87(2)(b) a § 87(2)(b) male, § 87(2)(b), made a sworn statement to the CCRB (encl. 7A-7E).

§ 87(2)(b) stated that on the afternoon of February 22, 2005, he and his friend, § 87(2)(b) were standing on the corner of East 125th Street and Lexington Avenue waiting for a friend at the train station. § 87(2)(b) described § 87(2)(b) as an acquaintance that he has known for one month from the neighborhood. As they stood on the street, § 87(2)(b) was talking to females and borrowed § 87(2)(b)'s cell phone to record the females' telephone numbers. In the five minutes that § 87(2)(b) and § 87(2)(b) stood there, § 87(2)(b) recorded two telephone numbers. A passerby, upon exiting the train station, asked if anyone was selling loose cigarettes, and § 87(2)(b) sold him two cigarettes for a dollar. § 87(2)(b) maintained, however, that § 87(2)(b) was not selling cigarettes. Lieutenant Michael Licitra and Officer Gregory Greiner approached § 87(2)(b) and questioned him about being a cigarette vendor. Although § 87(2)(b) denied being a vendor, the officers ordered § 87(2)(b) to place his hands in the air while Officer Greiner conducted a search of § 87(2)(b). During the search Officer

Greiner took § 87(2)(b)'s cell phone from § 87(2)(b). Lieutenant Licitra placed § 87(2)(b) in handcuffs and Officer Greiner led him away.

§ 87(2)(b) asked Lieutenant Licitra, who now had possession of the cell phone, for the return of his property, but Lieutenant Licitra said, "Hell no, you're not getting your phone. We're going to take it." When § 87(2)(b) repeated his request, Lieutenant Licitra put him against the back of a bus and called for assistance. Lieutenant Licitra asked § 87(2)(b) to turn around and placed his hands behind his back, but § 87(2)(b) refused because he did not believe that the officer had "reasonable cause" to arrest him. § 87(2)(b) alleged that Lieutenant Licitra wrapped his hands around his neck and swung him to the ground. § 87(2)(b) told Lieutenant Licitra, "Okay, put the handcuffs on," and was placed in handcuffs. § 87(2)(b) denied struggling with Lieutenant Licitra.

Lieutenant Christopher Schmidt and Officer William Flaherty, who had arrived at the scene in response to Lieutenant Licitra's call for assistance, transported § 87(2)(b) to the 25th Precinct stationhouse. § 87(2)(b) stated that Lieutenant Licitra approached him after he exited the patrol vehicle and said, "Is this the phone you wanted?" When § 87(2)(b) responded affirmatively, he alleged that Lieutenant Licitra dropped the phone to the ground, causing it to shatter. § 87(2)(b) stated that only Lieutenant Licitra, Lieutenant Schmidt and Officer Flaherty were present for this interaction.

Later on the same day, § 87(2)(b) asked Officer Flaherty about reimbursement for his cell phone but was told that there was nothing that could be done for him on that day. § 87(2)(b) returned on the following day after being released and again spoke with Officer Flaherty. Officer Flaherty provided § 87(2)(b) with a telephone number for Police Headquarters at One Police Plaza. § 87(2)(b) stated that he had called the number but did not know the status of the process.

§ 87(2)(b) § 87(2)(b)

Results of Investigation

Witness Statement

§ 87(2)(b) On March 3, 2005 the undersigned investigator contacted § 87(2)(b) who provided a brief telephone statement (encl. 5). § 87(2)(b) scheduled four appointments to provide a sworn statement, but failed to appear or cancel his appointments.

§ 87(2)(b) stated that on February 22, 2005, he was standing with § 87(2)(b) on East 125th Street and Lexington Avenue in front of Duane Reade. § 87(2)(b) did not know § 87(2)(b)'s name and stated that he was an acquaintance from school that he had bumped into that day. § 87(2)(b) gave a cigarette to a passerby that requested one from him, but did not exchange any money. Two police officers approached § 87(2)(b) and arrested him.

At the time, § 87(2)(b) had § 87(2)(b)'s cell phone in his pocket as he had used it earlier to obtain someone's telephone number. When he was arrested, Officer Greiner gave the cell phone to Lieutenant Licitra. § 87(2)(b) asked Lieutenant Licitra for his telephone, saying, "That's my phone. Can I have my phone?" Officer Greiner said, "That's his phone? Keep it." Lieutenant Licitra put § 87(2)(b)'s cell phone in his pocket. When § 87(2)(b) attempted to get the phone back, Lieutenant Licitra handcuffed him and "put him on the ground." § 87(2)(b) did not provide any further detail about this action. § 87(2)(b) stated that when he and § 87(2)(b) were being led through the parking lot of the precinct stationhouse, Lieutenant Licitra asked § 87(2)(b) "You want this phone right here?" and threw the cell phone to the ground. § 87(2)(b) did not specify what if anything happened to the cell phone.

Police Officer Statements

Officer William Flaherty, of the 25th Precinct (Witness Officer)

Officer Flaherty completed Complaint Report § 87(2)(b) (encl. 8A-8B) and an arrest report (encl. 9) pertaining to § 87(2)(b)'s February 22, 2005 arrest. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Officer Flaherty was interviewed at the CCRB on May 9, 2005 (encl. 10A-10B).

On February 22, 2005, Officer Flaherty responded to a 10-85 request for assistance at East 125th Street and Lexington Avenue with Lieutenant Christopher Schmidt. When they arrived at the scene, approximately 20 to 25 officers were already there as were numerous civilians. § 87(2)(b) had already been placed in handcuffs and was standing on the corner with Lieutenant Licitra.

Officer Flaherty and Lieutenant Schmidt transported § 87(2)(b) back to the precinct stationhouse without incident. Lieutenant Licitra and two other officers had driven to the stationhouse behind Officer Flaherty's vehicle entered the stationhouse at the same time that Officer Flaherty and Lieutenant Schmidt brought § 87(2)(b) into the stationhouse. Officer Flaherty did not recall that any officers had a conversation about a cell phone and stated that § 87(2)(b) did not say anything about one. Officer Flaherty stated that he never saw an officer drop a cell phone to the ground.

Officer Gregory Greiner, of the 25th Precinct (Witness Officer)

Lieutenant Michael Licitra, of the 25th Precinct (Subject Officer)

Officer Greiner was interviewed at the CCRB on May 24, 2005 (encl. 12, 13A-13B). Lieutenant Licitra was interviewed at the CCRB on June 2, 2005 (encl. 14A-14B). § 87(2)(g)

§ 87(2)(g)

On February 22, 2005, Lieutenant Licitra and Officer Greiner were driving on East 125th Street in Manhattan when they observed § 87(2)(b) sell loose cigarettes. The officers arrested § 87(2)(b) Officer Greiner, who had § 87(2)(b) in his custody, stated that § 87(2)(b) did not have a cell phone in his possession. During the arrest a large crowd formed. The crowd was compliant and dispersed when asked. There was, however, one male, § 87(2)(b) who refused to leave. Lieutenant Licitra stated that § 87(2)(b) was attempting to impede their path to their vehicle by standing between the officers and their vehicle. The officers asked § 87(2)(b) to leave, but § 87(2)(b) remained where he was. Both Officer Greiner and Lieutenant Licitra stated that § 87(2)(b) was protesting the arrest of § 87(2)(b) saying, "You're not arresting my friend." Lieutenant Licitra told § 87(2)(b) to leave the area and explained that he was obstructing a police arrest, but § 87(2)(b) would not leave. Officer Greiner stated that he never heard any exchange between Lieutenant Licitra and § 87(2)(b) about a cell phone.

Lieutenant Licitra stated that he asked § 87(2)(b) to place his hands behind his back because he was under arrest § 87(2)(b), but that § 87(2)(b) ignored this order as well. Lieutenant Licitra stated that when he attempted to handcuff § 87(2)(b), § 87(2)(b) pulled away from him and pushed him. Lieutenant Licitra stated that he immediately called for assistance. Lieutenant Licitra stated that § 87(2)(b) fought and wrestled with him and that at some point the struggle moved to the middle of East 125th Street. At some point Lieutenant Licitra and § 87(2)(b) fell to the ground, but Lieutenant Licitra stated that he could not recall how this happened. Officer Greiner believed that Lieutenant Licitra may have tripped § 87(2)(b). Lieutenant Licitra denied that he ever grabbed § 87(2)(b) by his neck and forced him to the ground; Officer Greiner also denied this allegation. Lieutenant Licitra attempted to handcuff § 87(2)(b) but § 87(2)(b) held his arms underneath him and close to his chest, in order to hinder Lieutenant Licitra's efforts. Lieutenant Licitra managed to pull § 87(2)(b)'s hands behind his back but § 87(2)(b) pulled his hands back.

Additional units arrived at the scene. Officer Greiner originally stated that Lieutenant Licitra handcuffed § 87(2)(b) when other units arrived the scene, and later stated that he was unsure of when the

handcuffing occurred. He ultimately clarified that Lieutenant Licitra handcuffed § 87(2)(b) before additional units arrived. Lieutenant Licitra, however, stated that he was unable to restrain § 87(2)(b) by himself and was only able to place § 87(2)(b) in handcuffs with the assistance of two or three responding officers.

Officer Greiner and Lieutenant Licitra transported § 87(2)(b) back to the stationhouse. Both Lieutenant Licitra and Officer Greiner stated that they could not recall who transported § 87(2)(b) to the stationhouse and that they could not recall whether they arrived at the stationhouse before or after the vehicle transporting § 87(2)(b). Lieutenant Licitra denied seeing or making any contact with § 87(2)(b) after he left East 125th Street. Officer Greiner denied seeing § 87(2)(b) in the parking lot of the precinct stationhouse. Lieutenant Licitra stated that he never dropped a cell phone to the ground. Officer Greiner denied ever seeing Lieutenant Licitra drop a cell phone to the ground. Both Lieutenant Licitra and Officer Greiner stated that there was never an issue regarding a cell phone and stated that they never observed a cell phone during the incident.

Lieutenant Christopher Schmidt, of the 25th Precinct (Witness Officer)

Lieutenant Schmidt was interviewed at CCRB on June 24, 2005 (encl. 15A-15B) § 87(2)(g)

Lieutenant Schmidt and Officer Flaherty transported § 87(2)(b) to the 25th Precinct stationhouse. Lt. Schmidt did not know who transported § 87(2)(b) to the precinct and could not say if § 87(2)(b) was removed from the scene before or after he left. Lt. Schmidt described the drive back as “unremarkable” and stated that he attempted to converse with § 87(2)(b) who appeared to be unhappy about his arrest. § 87(2)(b) told Lt. Schmidt that he and § 87(2)(b) had been arrested for no reason. He did not, however, make any statements about a cell phone.

Lieutenant Schmidt parked the vehicle in the rear of the 25th Precinct parking lot. He recalled that several vehicles pulled into the parking lot after him, but Lieutenant Schmidt could not say when Lieutenant Licitra and Officer Greiner arrived at the stationhouse. Officer Flaherty led § 87(2)(b) through the parking lot and turned left to enter the stationhouse. Lieutenant Schmidt stated that he remained behind for approximately 30 seconds to check his vehicle for contraband. He then entered the stationhouse shortly after Officer Flaherty and § 87(2)(b). Lieutenant Schmidt stated that he did not see any officers approach or interact with § 87(2)(b) as he was being led into the stationhouse. He denied seeing Lieutenant Licitra or Officer Greiner in the parking lot. Lieutenant Schmidt denied ever seeing an officer take a cell phone and throw it to the ground.

Police Documentation

A Sprint report (encl. 17) indicates that at 4:38 p.m., 25th Precinct Lieutenant Licitra requested additional assistance at the location. At 4:39 p.m., Lieutenant Licitra requested that no additional units come to the scene because the perpetrator was already in handcuffs.

The 25th Precinct Roll Call for February 22, 2005 (encl. 18A-18B) indicates that Lieutenant Michael Licitra, Lieutenant Christopher Schmidt, Officer Gregory Greiner and Officer William Flaherty worked on February 22, 2005 during the time of incident.

The 25th Precinct Command Log for February 22, 2005 (encl. 16) contains entries pertaining to the arrests of § 87(2)(b) and § 87(2)(b). § 87(2)(b), who was brought in at 4:45 p.m., has Officer Greiner listed as his arresting officer. § 87(2)(b) who was brought in at 4:50 p.m., has Officer Flaherty listed as his arresting officer.

Officer Greiner completed two property vouchers pertaining to the arrest of § 87(2)(b) (encl. 19A-19B). At the time of arrest, § 87(2)(b) had four music CDs and an empty box of Newport cigarettes in his possession.

Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Complainant CCRB History

§ 87(2)(b) was the complainant § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) has filed no prior complaints with the CCRB (encl. 2C).

Previously Substantiated CCRB Cases

Lieutenant Michael Licitra has had no substantiated CCRB allegations in his eleven-year tenure with the New York Police Department (encl. 2A).

Recommendations and Conclusions

Officer Identification

In his statement to the CCRB Lieutenant Michael Licitra identified himself as the officer that physically interacted with § 87(2)(b) on February 22, 2005 at East 125th Street and Lexington Avenue. § 87(2)(b) and § 87(2)(b) alleged that the officer that physically interacted with § 87(2)(b) was the same officer that damaged § 87(2)(b)'s cell phone.

Agreed Facts and Issues in Dispute

All parties agree that Lieutenant Licitra used physical force while arresting § 87(2)(b) § 87(2)(b) § 87(2)(g). § 87(2)(b) alleged that Lieutenant Licitra grabbed his neck and threw him to the ground. Lieutenant Licitra denied performing this action and stated that when he attempted to place § 87(2)(b) in handcuffs, § 87(2)(b) resisted by pushing him and pulling away. Lieutenant Licitra wrestled with § 87(2)(b) for a minute in order to overcome his resistance. The pair fell to the ground, but Lieutenant Licitra could not recall how this occurred. § 87(2)(b) and § 87(2)(b) further alleged that when he was being led through the 25th Precinct parking lot to stationhouse, Lieutenant Licitra dropped his cell phone to the ground, causing it to shatter. Lieutenant Licitra stated that he never saw a cell phone in the possession of either arrested party and denied breaking the cell phone. § 87(2)(g)

Credibility

§ 87(2)(g) In his telephone statement, § 87(2)(b) stated that he initially asked § 87(2)(b) to return his cell phone and that he asked the officers to return the phone when § 87(2)(b) refused. However, in his sworn statement, § 87(2)(b) stated that after § 87(2)(b) was searched and led away by Officer Greiner, he asked Lieutenant Licitra for his cell phone. § 87(2)(g)

According to § 87(2)(b) after he was taken to the ground, he told Lieutenant Licitra, "Okay, put the handcuffs on me," and denied that he fought or struggled with Lieutenant Licitra. However, he further mentions in his statement that the crowd told him to allow himself to be handcuffed and taken to the precinct § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Further, in § 87(2)(b)'s statements to Internal Affairs, he stated that he was present when Lieutenant Licitra damaged § 87(2)(b)'s property. However, in his sworn statement to the CCRB, § 87(2)(b) indicated that he was the only civilian present at this time.

§ 87(2)(g)

Officer Flaherty asserted that Lieutenant Licitra and Officer Greiner entered the stationhouse as he and Lieutenant Schmidt led § 87(2)(b) into the stationhouse. Officer Greiner denied seeing § 87(2)(b) in the stationhouse parking lot and Lieutenant Licitra stated that he last saw § 87(2)(b) at the corner of East 125th Street and Lexington when he was taken away to be transported. § 87(2)(g)

Allegation A: At East 125th Street and Lexington Avenue Lieutenant Michael Licitra used physical force against § 87(2)(b)

§ 87(2)(b) alleged that Lieutenant Licitra grabbed him by his neck and swung him to the ground after he refused to place his hands behind his back to be handcuffed. Lieutenant Licitra affirmed that he used physical force against § 87(2)(b) by struggling with him in an attempt to place § 87(2)(b) in handcuffs and to resist § 87(2)(b)'s efforts to push him. He explained that these actions were taken because § 87(2)(b) ignored his repeated orders to leave the area and resisted his efforts to handcuff him. § 87(2)(b) admitted that he approached the officers as they were effectuating an arrest of § 87(2)(b) but stated that he did so in order to retrieve his cell phone. And although § 87(2)(b) acknowledged that he refused orders to place his hands behind his back, he claimed that he had done so because Lieutenant Licitra did not have “reasonable cause” to arrest him. § 87(2)(b) denied fighting Lieutenant Licitra and stated that he agreed to be handcuffed after being taken to the ground. § 87(2)(g)

Penal Law 35.27 states, “A person may not use physical force to resist an arrest, whether authorized or unauthorized, which is being effectuated or attempted by a police officer when it would reasonably appear that the later is a police officer” (encl. 1). § 87(2)(g)

Allegation B: In the parking lot of the 25th Precinct Stationhouse Lieutenant Michael Licitra damaged § 87(2)(b)'s property.

§ 87(2)(b) alleged that Lieutenant Licitra dropped his cell phone to the ground, causing it to shatter. Lieutenant Licitra denied ever seeing a cell phone and stated that he did not interact with § 87(2)(b) after § 87(2)(b) was taken for transport to the stationhouse. Officer Greiner, who was initially at the scene, and Officer Flaherty and Lieutenant Licitra, who transported § 87(2)(b) to the stationhouse, denied that § 87(2)(b) ever made mention of a cell phone. Officer Flaherty and Lieutenant Schmidt, who transported § 87(2)(b) to the 25th Precinct stated that § 87(2)(b) never mentioned a cell phone.

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: